General Conditions of Contract

## Definitions

In these General Conditions of Contract (the **Conditions**), the following words and expressions shall (unless the context requires otherwise) have the meanings as stated. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

### **Abandons** means that the Supplier abandons the design, manufacturing or part of the Works, other than where this is due to a Force Majeure Event.

### **Affiliate** means in respect of either Party, any person, which directly or indirectly is controlled by such Party; or controls such Party; or is controlled by a person who directly or indirectly controls such Party. For the purposes of this definition:

#### a person is directly controlled by another person if the latter person holds shares, quotas or voting rights carrying in the aggregate the majority (more than fifty per cent) of the votes exercisable at shareholders’ meetings of the former person; and

#### a particular person is indirectly controlled by a person, hereinafter called the **parent company** or **parent companies**, if a series of companies can be specified, beginning with the parent company or parent companies and ending with the particular person, so related that each company of the series, except the parent company or parent companies, is directly controlled by one or more of the companies earlier in the series.

### **Anti-Corruption Laws** means any applicable Laws relating to the prevention of bribery, corruption, fraud or similar or related activities, as amended from time to time (including the United Kingdom Bribery Act 2010, the United States Foreign Corrupt Practices Act and the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (signed in Paris on 17 December 1997)).

### **Base Date** means the date of signature of this Contract.

### **Change in Law** means any of the following events occurring after the Base Date:

#### the enactment, promulgation, issue or commencement of a new Law of the Republic of Sierra Leone;

#### an amendment, modification, extension, replacement, re-enactment or repeal of an existing Law of the Republic of Sierra Leone;

#### a change having the force of law in the application or interpretation of a Law of the Republic of Sierra Leone; and

#### the enactment, promulgation or issue of a grid code and, thereafter, any amendment, modification, extension, replacement, re-enactment or repeal of an existing grid code and/or a change in the application or interpretation of an existing grid code.

### **Collateral Warranty** means a duly executed collateral warranty agreement in the form provided by the Contractor or in such other form as may be approved by the Employer.

### **Subcontract** or Purchase Order (PO) means the purchase order entered into between the Contractor and the Supplier together with all schedules, key terms and conditions, scope of works, technical specifications, technical documents, these Conditions and attachments hereto as may be amended, supplemented or modified in accordance with the provisions hereof, together with any and all, appendices, schedules, addendums and amendments hereto.

### **Subcontract Price** means the agreed amount as set out in the Purchase Order, as such amount may be amended from time to time in accordance with the Subcontract.

### **Contractor** means Shapoorji Pallonji and Company Private Limited, having its registered office at 70, Nagindas Master Road, Fort, Mumbai, Maharashtra, India – 400023.

### **Supplier’s Documents** means the calculations, computer programs and other software, drawings, manuals, models and other documents relating to the Works supplied by the Supplier under the Contract, including as described in Sub‑Clause 5.2 (*Supplier’s Documents*).

### **Supplier’s Equipment** means all apparatus, machinery, vehicles and other things required for the execution and completion of the Works and the remedying of any Defects, but excluding temporary works, Contractor’s equipment (if any), Materials and any other things intended to form or forming part of the Works.

### **Supplier’s Personnel** means all its personnel or its subcontractor’s personnel, and any other personnel assisting the Supplier in the execution of the Works.

### **Cost** means expenditure reasonably incurred by the Supplier in relation to the Works.

### **Day** means each period of twenty four (24) hours beginning and ending at 00:00 and **Year** means three hundred and sixty five (365) Days.

### **Defect** means any defect, error, failure, imperfection or fault in or to the Materials and/or Works including in any design, materials or workmanship or a lack of fitness for purpose (as outlined in the Subcontract) and any failure of the Works to comply with the Subcontract, together with any damage to the Works arising from such defect, as notified by the Contractor to the Supplier prior to the expiry of the relevant Defects Notification Period. A Defect does not include defects or damage arising due to:

#### normal wear and tear;

#### faulty or negligent handling by persons other than Supplier or its Personnel; or

#### non-compliance by persons other than the Supplier or its Personnel with the operations and maintenance manuals provided by the Supplier.

and **Defective** shall be construed accordingly.

### **Defects Notification Period** means the periods for notifying Defects in the Works under Sub‑Clause 11.1 (*Completion of Outstanding Work and Remedying Defects*) which period shall be as specified in the Purchase Order and such period may be extended from time to time in accordance with Clause 11 (*Defects Liability*).

### **Delay LDs Cap** means the maximum amount of Delay Liquidated Damages which shall be equal to the sum as specified in the Purchase Order.

### **Employer** means CECA SL Generation Limited, 8, Boyle Lane, Murray Town, Top Floor, 9 Liverpool Street, Freetown, Sierra Leone.

### **Environmental Regulations** means any Law of the Republic of Sierra Leone which has as its purpose or effect the protection of, or the prevention of harm or damage to, the environment or to provide remedies in relation to harm or damage to the environment.

### **Expropriation** means the expropriation, nationalisation, confiscation, forced sale, seizure, annulment or compulsory acquisition of the whole or any part of the right, title and interest of the Employer in the project by the Government or a Government authority of Sierra Leone.

### **Force Majeure Event** means any event or circumstance (and the effects thereof):

#### the occurrence or existence of which is beyond the reasonable control of the affected Party;

#### which could not have been reasonably prevented, avoided or overcome by the affected Party through the exercise of reasonable care, skill or due diligence, acting in accordance with Good Industry Practice;

#### which prevents, delays or hinders the affected Party from performing its obligations, or enjoying or benefitting from any of its rights, under the Subcontract;

#### which is not the direct or indirect result of the affected Party’s breach of the Subcontract ; and

#### which is not excluded from this definition by Sub-Clause ‎18.3.4 (*Exclusions from Force Majeure Events*),

including, if and to the extent paragraphs ‎(a) to ‎(e) are satisfied: (i) acts of God (including lightning, fire, earthquake, flood, storm, hurricane, cyclone, typhoon, tornado, epidemic or plague); (ii) any events occurring after the Base Date that would have constituted a Change in Law, but for the application of paragraph (b) of the definition of Force Majeure Events; (iii) the termination of the Key Project Document not attributable to acts, omissions or default by the Parties; (iv) Expropriation; (v) acts of war (whether declared or not), invasion, armed conflict, act of foreign enemy or blockade; and (vi) acts of rebellion, riot, insurrection, revolution, civil commotion, political violence, public disorder, act or campaign of terrorism, sabotage of a political nature or political violence.

### **Good Industry Practice** means the exercise of that degree of skill, diligence, prudence and foresight that would reasonably be expected from skilled and experienced suppliers of similar Works, which is consistent with best practices, methods that are generally accepted internationally from time to time for similar facilities operating in conditions comparable to those applicable to the power station, consistent with Laws and taking into account factors such as (i) the use of the latest technology, (ii) the specifications, relative size, performance, age and technology of the physical components of the power station and (iii) the safe, efficient and economic design, construction, commissioning and testing of the power station.

### **Government** means the government of the Republic of Sierra Leone.

### **Hazardous Substance** means any solid, liquid or gaseous material, substance, constituent, chemical, mixture, raw material, intermediate product or by-product including waste oil (including, for the avoidance of doubt, waste heavy fuel oil and waste light fuel oil/diesel oil, other forms of petroleum and fractions thereof) which is defined as a **hazardous substance**, **hazardous waste**, **hazardous material**, **toxic substance** or **toxic pollutant** under, or is otherwise regulated by, Environmental Regulations.

### Head Contract means the contract entered into between the Contractor and the Employer relating to the Works and the project.

### **Insolvency Event**, in relation to any person, means:

#### the passing of a resolution for the bankruptcy, insolvency, winding up, liquidation or other similar proceeding relating to that person;

#### that person admitting in writing that is unable to pay its debts as they fall due;

#### a liquidator, receiver, administrator or other similar person being appointed in respect of that person or any of his assets;

#### any government authority with jurisdiction over that person making an order for the winding up of that person or otherwise confirming the bankruptcy or insolvency of that person;

#### the voluntary filing by that person of a petition of bankruptcy, moratorium or other similar relief; and/or

#### any other event occurring in any jurisdiction which has an effect analogous to any of the events referred to above,

except where any of the procedures set out above is instituted by that person for the purpose of a fully solvent reorganisation.

### Intellectual Property Rights means any intellectual and industrial property rights including, without limitation, patents, designs, utility models, copyright, database rights, trade marks, rights in know-how, trade secrets and confidential information and any other rights of similar or equivalent effect anywhere in the world whether registered or not and including pending applications to register such rights.

### **Key Project Document** means (a) the Power Purchase Agreement; and/or (b) the Head Contract.

### Latent Defect means any Defect inherently lying within the Works and/or Materials, which a reasonable examination by the Contractor in accordance with Good Industry Practices would not have discovered prior to expiry of the applicable Defects Notification Period.

### Latent Defect Period means in respect of the Works, the period as mentioned in the Purchase Order.

### **Laws** includes any constitution or provision, treaty, decree, convention, statute, act of parliament, instrument, regulation, code, certificates, decision, memorandum, circular, resolution, directive, approval, licence, rule, order, ordinance, proclamation, subordinate legislation, delegated legislation, by-law, judgment, rule of common law or equity, rule, ruling, interpretation or guideline by a competent entity exercising jurisdiction in the relevant matter, including a rule, ruling, interpretation or guideline of any governmental authority, and includes, for the avoidance of doubt, the Laws of the Republic of Sierra Leone.

### **Lender Requirements** means the statutory and policy requirement document of Lenders as already provided to the Supplier to the extent the same are applicable to the Supplier in undertaking the Works and/or its performance of its obligations pursuant to the Subcontract.

### **Lender(s)** means any providers of finance, re-finance or credit support for the project including any agent or trustee for the lenders.

### **Lenders’ Technical Adviser** means any person appointed by or on behalf of the Lenders to advise them in relation to the technical aspects of the Works.

### Lien means any mortgage, lien, pledge, claim, charge, lease, easement, security interest or encumbrance of any kind.

### Liquidated Damages means the Delay Liquidated Damages and Performance Liquidated Damages.

### **Longstop Date** means the date upon which the Contractor’s liability for Delay Liquidated Damages reaches the Delay LDs Cap.

### **Materials** means things or goods or equipment of all kinds intended to form or forming part of the Works.

### Minimum Performance Levels means (as the context requires):

#### those Performance Guarantees to which a minimum performance level applies and that the Works are required to achieve as per the Subcontract; and/or

#### those Performance Guarantees to which “pass/fail” requirements apply and which the Works are required to pass in accordance with the Subcontract,

#### and that (in either case) need to be achieved in order to fulfil the conditions to Taking Over set out in Sub-Clause 10.1.1 (*Taking Over of the Works*).

### **Offtaker** means the Government and Electricity Distribution and Supply Authority.

### **Parties** means the Contractor and the Supplier.

### **Party** means the Contractor or the Supplier, as the context requires.

### **Performance Certificate** means the certificate issued under Sub‑Clause 11.7 (*Performance Certificate*).

### Performance Guarantees means the performance guarantees in respect of certain performance levels parameters of the Works as specified in the Subcontract.

### Performance LDs Cap means the maximum amount of Performance Liquidated Damages which shall be equal to the sum as specified in the Purchase Order.

### **Performance Security** means any and all bank guarantees or corporate guarantees or insurance bonds as appliable under the Subcontract.

### **Power Purchase Agreement** or **PPA** means the power purchase entered into between (i) The Government, (ii) Electricity Distribution and Supply Authority (iii) CEC Africa (Sierra Leone) Limited and (iv) the Employer including any amendments.

### **Punch List** means the list of works for the Works and/or the Materials to be prepared by the Contractor requiring rectification due to Defect or non-compliance with the Subcontract or which are incomplete and which shall be rectified or completed by the Supplier within three (3) months after the Taking-Over Date and (a) that are not material to the operation of the Works and (b) do not impair the performance, operability, reliability, safety or mechanical or electrical integrity of the Works.

### **Services** means the supervisions of erection, Tests on Completion or other services to be provided by the Supplier in relation to the Works in accordance with the Subcontract, prevailing tax laws in Republic of Sierra Leone and the tax exemption document provided by the Contractor.

### **Not Used**.

### **Not Used.**

### **Sierra Leone** means the Republic of Sierra Leone.

### **Site** means the land at which the Power Station is to be constructed, located in Freetown, Sierra Leone with a Global Positioning System coordinates of approximately 8°28’33.6144” N, 13°11’27.9816” W.

### **Statement** means a statement submitted by the Supplier as part of an application for payment under Clause 13 (Sub*contract Price and Payment*).

### **Take Over** means where a Taking Over Certificate in respect of the Works has been issued by the Contractor to the Supplier and “**Taken Over**” and “**Taking-Over**” shall be construed accordingly.

### **Taking‑Over Certificate** means a certificate issued under Clause 10 (Contractor’s *Taking Over*).

### **Tests on Completion** means the tests as per the Subcontract and which are carried out under Clause 9 (*Tests on Completion*) before the Works are Taken Over by the Contractor.

### **Time for Completion** means the time for completing all the Works as mentioned in the Subcontract.

### **Variation** means any change to the Works with respect to the Subcontract, which is instructed or approved as a variation under Clause 12 (*Variations and Adjustments*).

### **Works** mean all the works including the Services to be performed by the Supplier as per the Subcontract to the satisfaction of the Contractor and in accordance with the Subcontract.

## Interpretation

### In the Subcontract, except where the context requires otherwise:

#### words indicating one gender include all genders;

#### words indicating the singular also include the plural and words indicating the plural also include the singular;

#### provisions including the word **agree**, **agreed** or **agreement** require to be recorded in writing;

#### **written** or **in writing** means hand‑written, type‑written, printed or electronically made, and resulting in a permanent record;

#### any reference to this Subcontract or to any other document or agreement shall include any permitted variation, amendment or supplement to this Subcontract or to such document or agreement;

#### any reference to a person shall include individuals, firms, partnerships and any entity having legal capacity;

#### any reference to a person shall include its successors in title, permitted assignees and permitted transferees; and

#### the terms include, including, in particular or any similar expression shall be construed as illustrative and without limitation to the words that precede such terms.

### Each of the provisions of the Subcontract is severable and distinct from the others and if for any reason any one or more of such provisions is found to be ineffective, inoperable or unenforceable it shall be severed and deemed to be deleted from the Subcontract, and in such event the remaining provisions of the Subcontract shall continue to have full force and effect.

### In the event that any provision of the Subcontract is found to be ineffective, inoperable or unenforceable, the Parties agree to negotiate in good faith to reach an equitable agreement as to how to give effect to the intention of the Parties as set out in the Subcontract.

### The provisions of the Subcontract that by their nature are intended to survive the termination, cancellation, completion or expiry of the Subcontract (including any provision limiting or releasing liability) shall continue as valid and enforceable provisions notwithstanding any such termination, cancellation, completion and expiry.

### Any failure to exercise or delay in exercising a right or remedy under or in relation to the Subcontract shall not constitute a waiver of such right or remedy nor a waiver of any other right or remedy. No waiver of a breach of or default under the Subcontract shall constitute a waiver of any other breach of or default under the Subcontract or affect the terms of the Subcontract. Any waiver by a Party of any of its rights or remedies under or in relation to the Subcontract shall be received in writing by the other Party.

## Communications

Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices and requests, these communications shall be in writing and delivered by hand or courier, sent by pre-paid mail or email to the address for the recipient's communications. Such address shall be notified by Parties to each other during the kick-off meeting after signing of the Subcontract.

## Law and Language

### The Subcontract and any non-contractual obligations connected to it shall be governed by and construed in accordance with the laws of India.

### The language of the Subcontract shall be English and if there are versions of any part of the Subcontract which are written in more than one language, the version which is in English shall prevail.

### The language for written and oral communications under the Subcontract shall be English, save where required otherwise by any applicable Law.

## Priority of Documents

### The documents forming the Subcontract are to be taken as mutually explanatory of one another. If the Supplier finds any discrepancy, ambiguity or inconsistency in or between any of the documents forming the Subcontract, the Supplier shall immediately notify the Contractor giving details of such discrepancy, ambiguity or inconsistency and the Contractor shall inform the Supplier how to proceed with the same.

## Subcontract Agreement and Prior Agreements

### The Subcontract shall come into full force and effect on the date of issue of the Letter of Award or Purchase Order to the Supplier.

## Assignment

### The Supplier shall not assign or transfer the whole or any part of the Subcontract or any benefit or interest or burden or obligation in or under the Subcontract without the prior written consent of the Contractor. The Contractor shall be entitled to assign any benefit or interest in or under the Subcontract to any Affiliate or party providing financing (or the nominee of any party providing financing provided such nominee shall not be a direct competitor to the Supplier or otherwise involved in formal dispute proceedings with the Supplier) for or in connection with the Works or the completed Works (or their security agent), without the consent of the Supplier. Subject to the foregoing, the Contractor shall not assign or transfer the whole or any part of the Subcontract or any benefit or burden or obligation in or under the Subcontract without the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed).

## Confidentiality

### Subject to Sub-Clause1.8.2, each Party shall and shall procure that its officers, employees, consultants, shareholders, Affiliates and subcontractors shall safeguard and treat as confidential all information, documents and materials which it acquires in the course of negotiations or during the term of the Subcontract and which concern the other Party and/or any transactions for the exploitation of the Works entered into or to be entered into between the Contractor and any other party (the “**Confidential Information**”) and shall not use the Confidential Information for its own purposes (except to the extent necessary to carry out obligations under the Subcontract) without in any such case (and only to the extent permitted by) the prior written consent of the Party concerned.

### Each Party shall be permitted to disclose all or part of the Confidential Information:

#### as required by any applicable Laws or by the rules of any relevant stock exchange or by any relevant national or supranational regulatory authority;

#### to any subcontractor for the furtherance of the performance of that party's obligations in respect of the Subcontract;

provided always that the recipients referred to in paragraph (b) above have a reasonable need to know the Confidential Information and have entered into an agreement relating to the Confidential Information on no less onerous terms than those set out in Sub-Clause 1.8.1.

### The obligations of confidentiality in Sub-Clause 1.8.1 shall survive the termination of the Subcontract and shall continue until all or any part, as the case may be, of the Confidential Information enters the public domain through no fault of the relevant party or its agents whereupon the obligation of confidentiality will cease only in respect of the Confidential Information which has so entered the public domain.

## Contractor’s Use of Intellectual Property Rights and Supplier’s Documents

### As between the Parties, the Supplier shall retain the copyright and other Intellectual Property Rights in the Supplier’s Documents (which includes any design documents made by (or on behalf of) the Supplier). .

### The Supplier shall be deemed (by signing the Subcontract) to grant to the Contractor an irrevocable, non‑exclusive, royalty‑free, licence to copy, use and communicate the Supplier’s Documents, including making and using modifications of them. This licence shall:

#### apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works;

#### entitle the Contractor (or its nominees) to copy, use and communicate the Supplier’s Documents for the purpose of completing, operating, maintaining, adjusting, repairing, and demolishing of the Works; and

#### in the case that the Supplier’s Documents which are in the form of computer programs and other software, permit their use on any computer on the Site and other places as envisaged by the Subcontract, including replacements of any computers supplied by the Supplier.

## Supplier’s Use of Contractor’s Documents

### As between the Parties, the Contractor shall retain the copyright and other Intellectual Property Rights in the Subcontract and other documents made by (or on behalf of) the Contractor (the “**Contractor’s Copyright Works”**). The Supplier may, at his cost, copy, use, and obtain communication of the Contractor’s Copyright Works for the purposes of the Subcontract.

### The Contractor shall not be liable for any use of the Contractor’s Copyright Works for any purpose other than that for which they were prepared.

## Compliance with Laws and the Subcontract

### The Supplier shall, in performing the Subcontract,

#### comply with all applicable Laws, and

#### carry out and complete the Works and remedy any Defects therein so as to comply with and not to cause the Contractor to breach any applicable Laws, and Subcontract and so that the Works can be operated and maintained in compliance with, all requirements of such as, applicable Laws, and the Subcontract.

### The Supplier shall indemnify and hold the Contractor harmless against and from the consequences of any failure by it to comply with Sub-Clause 1.13.1

## Tax Liability

### The Supplier shall be responsible and shall be deemed to have acquainted itself of all taxes, duties, laws, statute, regulations, levies and other charges relating to the Works outside the Republic of Sierra Leone and the Supplier shall indemnify the Contractor against any such taxes, duties, laws, statute, regulations, levies and other charges.

## Compliance with Subcontract

### Subject to Sub-Clause 1.8 (*Confidentiality*), the Supplier shall disclose any information which the Contractor may reasonably require in order to verify the Supplier’s compliance with the Subcontract.

## Independent Subcontractor

### The Supplier shall be an independent subcontractor performing the Subcontract. The Subcontract does not create any partnership, joint venture or other joint relationship between the Contractor on the one hand and the Supplier on the other hand.

# The Contractor

## Right of Access to the Site

The Contractor shall give the subcontractor right of access to such parts of the Site as the subcontractor may reasonably require to comply with its obligations under the Subcontract.

### The Parties acknowledge and agree that:

#### the Employer shall be the consignee and importer of the Materials and/or Works and be responsible for payment of customs duty, if any.

#### without prejudice to its obligations or liabilities under this Subcontract, the Supplier shall ensure that the Employer is clearly identified as the consignee (i.e. to whom the Materials will be shipped) of all Materials and all supporting import information shall also clearly indicate the Employer as the consignee.

# The Contractor’s Administration

## Delegated Persons

### Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by a delegated person of the Contractor, in accordance with the delegation, shall have the same effect as though the act had been an act of the Contractor. However:

#### no expression of satisfaction, comment, review, approval, check, examination, inspection or test by or on behalf of the Contractor shall relieve the Supplier from any responsibility, obligation, risk or liability under the Subcontract, including responsibility for errors, omissions, discrepancies and non‑compliances; and

#### no failure to comment, review, disapprove, check, examine, inspect or test any work shall constitute approval, and no such failure shall therefore prejudice the right of the Contractor to reject the Works;

## Instructions

### The Contractor may issue to the Supplier instructions which the Contractor considers to be necessary or expedient in connection with the Supplier’s performance of his obligations under the Subcontract. Each instruction shall be given in writing. If any such instruction constitutes a Variation, Clause 12 (*Variations and Adjustments*) shall apply.

## Determinations

### Whenever these Conditions provide that the Contractor shall proceed in accordance with this Sub‑Clause 3.3 to agree or determine any matter, the Contractor shall consult with the Supplier in an endeavour to reach agreement. If agreement is not achieved within fourteen (14) days, the Contractor shall make a fair determination in accordance with the Subcontract, taking due regard of all relevant circumstances and relevant documents.

### The Contractor shall give notice to the Supplier of each agreement or determination, with supporting particulars. Each Party shall give effect to each agreement or determination, unless the Supplier gives notice, to the Contractor, of his dissatisfaction with a determination within fourteen (14) days of receiving it. Either Party may then refer the dispute to dispute resolution in accordance with Clause 19 (*Claims and Disputes*) (but the performance of the Subcontract shall continue in accordance with the Subcontract until the outcome of the dispute resolution process).

# The Supplier

## Supplier’s General Obligations

### The Supplier shall design, execute and complete the Works in accordance with the Subcontract, and shall remedy any Defects and when completed, the Works shall be fit for purpose in relation to the purposes for which the Works are intended as set out in the Subcontract:.

### For purposes of this Sub-Clause 4.1.1, the term “fit for the purpose” shall mean that:

#### when completed, the Works shall comply in all material respects with the Subcontract;

#### all Works shall be new, with no inherent defect in design or fabrication. All Works, materials and equipment shall be in the care, custody, and control of the Supplier and properly preserved and maintained at all times until delivery to the Contractor.

#### the Contractor shall be able to operate the completed Works in accordance with the Subcontract and all applicable Laws, and

#### the Works will have a design life of not less than twenty five (25 years) from the scheduled Taking Over Date,

### The Supplier shall provide the Materials and Supplier’s Documents specified in the Subcontract, and all Supplier’s Personnel, consumables and other things and services, whether of a temporary or permanent nature, required for the Supplier to perform its obligations under and in accordance with the Subcontract.

### The Works shall include any work which is necessary to satisfy the Subcontract, or is implied by the Subcontract, and all works which (although not mentioned in the Subcontract) are necessary for stability or for the completion, or safe and proper operation, of the Works.

## Performance Security

### The Supplier shall obtain (at its own cost) and provide to the Contractor irrevocable and unconditional bank guarantees as per the Subcontract from banks agreed by the Contractor.

### Notwithstanding any other provision of this Subcontract, the Contractor shall not be obliged to make any payment to the Supplier until the Supplier has provided the documents required under this Sub-Clause, the Contractor may retain monies payable to the Supplier in an amount equal to the required value(s) of the Performance Securities that have not been provided, in its absolute discretion.

### If the Supplier is required to replace or extend any bond or guarantee in order to ensure that the Performance Security is in full force and effect for the period required as per the Subcontract , the Supplier shall provide to the Contractor a replacement bond or guarantee or an extension of the term of such bond or guarantee, in each case complying with the requirements of the Subcontract , at least thirty (30) days prior to its expiry. If the Supplier fails to comply with such obligation to extend any of the Performance Securities, then (without prejudice to any other rights of the Contractor to call on the bonds or guarantee) the Contractor shall be entitled to hold such monies as cash collateral for the Supplier’s obligations and liabilities under or in relation to this Subcontract, until the Supplier provides replacement Performance Securities that complies with the requirements of this Subcontract.

## Supplier’s Representative

### The Supplier shall appoint a Supplier's Representative and give him all authority necessary to act on the Supplier's behalf under the Subcontract. The Supplier shall, on or prior to the Base Date, notify the Contractor of the person it intends to designate as the Supplier’s Representative. For the avoidance of doubt, the Supplier’s Representative has authority to act on behalf of all of the persons forming the Supplier.

### If the appointed person fails to act as Supplier's Representative in accordance with the Subcontract, the Supplier shall submit to the Contractor for its consent (which cannot be unreasonably withheld) the name and particulars of another suitable person for such appointment.

### The Supplier's Representative shall, on behalf of the Supplier, receive instructions under Sub‑Clause 3.2 (*Instructions*).

### The Supplier's Representative and all these persons shall be fluent in the language for communications defined in Sub‑Clause 1.4 (*Law and Language*).

## Supplier’s subcontractors :

### The Supplier shall not subcontract the whole of the Works.

### The Supplier shall be responsible for the acts, omissions or defaults of any of its subcontractor, his agents or employees, as if they were the acts, omissions or defaults of the Supplier.

### The Parties acknowledge and agree that Supplier, shall not be required to obtain the consent of the Contractor to subcontract parts of the Works to the corresponding subcontractors identified in pre-approved subcontractor list. In the event that the Supplier wishes to subcontract any part of the Works to a supplier or subcontractor that is not listed in the pre-approved subcontractor list or in case a pre-approved subcontractor list has not been agreed between the Contractor and the Supplier, then the Supplier shall be required to obtain the consent of the Contractor prior to engaging any such supplier or subcontractor.

## Quality Assurance

### The Supplier shall institute a quality assurance system to demonstrate compliance with the requirements of the Subcontract. The system shall be in accordance with the details stated in the Subcontract*.* The quality assurance system shall include:

#### inspection and test plans for all types of work, approved by the Contractor, and

#### notice of inspections

### Details of all procedures and compliance documents shall be submitted to the Contractor for information before each design and execution stage is commenced and the same shall be in accordance with quality control plan When any document of a technical nature is issued to the Contractor, evidence of the prior approval by the Supplier himself shall be apparent on the document itself.

### Compliance with the quality assurance system shall not relieve the Supplier of any of his duties, obligations or responsibilities under the Subcontract.

## Sufficiency of the Subcontract Price

### The Supplier is satisfied as to the correctness and sufficiency of the Subcontract Price.

### Unless otherwise stated in the Subcontract, the Subcontract Price covers all the Supplier’s obligations under the Subcontract and all things necessary for the proper design, execution and completion of the Works and the remedying of any Defects.

## Unforeseeable Difficulties

### Except as otherwise expressly stated in the Subcontract:

#### the Supplier shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the Works;

#### by signing the Subcontract, the Supplier accepts total responsibility for having foreseen all difficulties and costs of successfully completing the Works; and

#### the Supplier shall not be entitled to any additional payment, extension of time or other relief in respect of the performance of its obligations under this Subcontract as a result of any unforeseen difficulties or costs.

## Transport of Materials

### Unless otherwise stated in these Conditions:

#### the Supplier shall give the Contractor not less than thirty (30) days' notice of the date on which any part of the Works will be delivered to the port of delivery as per agreed Incoterms ; and

#### the Supplier shall be responsible for packing, loading, transporting to the port of delivery as per the Subcontract and protecting all Materials and/or the Works;

### The Supplier shall be responsible for the damages and losses incurred, and shall indemnify and hold the Contractor harmless against and from all damages, losses and or expenses (including legal fees and expenses) resulting from the transport of Materials, and shall negotiate and pay all claims arising from their transport.

### . The Supplier shall ensure sufficient seaworthy packaging of the Materials with proper packaging and lashing arrangement to protect the Materials. This packaging should be internationally accepted for industrial machinery by insurance companies. The Supplier shall ensure (at its own cost) that the packages are fit for sea voyage and shall have necessary documents / certificates required by shipping line and insurance company. The Supplier shall be solely responsible for packing, loading, transporting and protecting all the Materials and other things required for the Works at its sole cost as per the agreed Incoterms:

### If, as a result of the Supplier’s failure to comply with Sub-Clauses 2.2.1(b) and/or this Sub-clause (*Transport of Materials*), any policy of insurance taken out by the Employer/Contractor is vitiated or the proceeds payable thereunder are reduced, the Supplier shall indemnify the Contractor against all and any losses or claims it thereby suffers.

### At least 15 days prior to the dispatch of the Materials by the Supplier, the Supplier shall furnish the following information concerning to shipment to the Contractor for organizing the export of the Materials:

### A packing list mentioning the description of the items contained in such shipment, HS codes, approximate weight and volume, number and type of packages;

### the planned date of departure;

### draft invoice; and

### material safety data sheet (“MSDS”), dangerous goods declaration (if applicable) as per dangerous good regulation, any other significant information required for transit (example: requirement of an electric connection for operating dehumidifiers, heaters, coolers etc.).

### The Contractor shall review these documents and communicate to the Supplier within seven (7) days from receipt of such documents, any corrections required with reasons. The Supplier shall make such reasonable corrections promptly.

### For FOB shipments the Contractor shall provide booking confirmation and notification to Supplier latest ten (10) days before scheduled FOB date.

### Notwithstanding anything to the contrary, prior to dispatch of the Materials the Supplier must obtain the dispatch clearance certificate from the Contractor.

### Before dispatch of the Materials by the Supplier, the Supplier shall submit to the Contractor the following documents:

1. Final invoice
2. Final and correct packing list containing details of weight, dimensions, HS codes, container numbers & container stuffing details (in case of containerized consignments);
3. Dispatch clearance certificate
4. Certificate of origin issued by Chamber of Commerce or equivalent authority;
5. Packing conformity as of ISPM 15 regulation i.e. all boxes and crates to be with ISPM 15 marking/stamps as norms along with ISPM certificates (ISPM certificates to be provided by the Supplier if required by authorities in Sierra Leone);
6. Dangerous goods declaration as per dangerous goods regulations (required only in case of any dangerous goods);
7. MSDS – required, only in case of any dangerous goods like compressed gas, lubricant, paints etc; and
8. Electronic cargo tracking note (if applicable).

### In case the Contractor requires manuals related to the Works for custom clearance, the Supplier shall provide the same promptly on reasonable request by the Contractor.

## Supplier’s Equipment

The Supplier shall be responsible for all Supplier’s Equipment. When brought on to the Site, Supplier’s Equipment shall be deemed to be exclusively intended for the execution of the Works.

The Supplier’s Equipment shall have adequate health and safety certification as required by Applicable Law.

## Protection of the Environment

### The Supplier shall take all reasonable steps to protect the environment and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations.

### The Supplier shall ensure that emissions, surface discharges and effluent from the Supplier’s activities shall not exceed the values indicated in the Subcontract (if any), and shall not exceed the values prescribed by applicable Laws.

### The Supplier shall indemnify and hold harmless the Contractor against any environmental or other liability (including clean-up costs) associated with the Supplier bringing or otherwise using Hazardous Substances or from any environmental damage otherwise caused by the Supplier’s act, omission or performance of the Works.

## Progress Reports

### The Supplier shall submit monthly progress reports to the Contractor in a format agreed with the Contractor. The progress reports shall be prepared by the Supplier and submitted to the Contractor by email to an agreed distribution list and via a document transmittal system.

### The first monthly report shall cover the period up to the end of the first calendar month following the Base Date. Reports shall be submitted monthly thereafter, each within five (5) days after the last day of the period to which it relates.

### Reporting shall continue until the Supplier has completed all work which is known to be outstanding at the Taking‑Over Date.

## Prevention of Corruption

### The Supplier agrees that it shall (and shall procure that all Supplier’s Personnel shall), in respect of the Works, conduct its business in compliance with (i) Anti-Corruption Laws; (ii) Lender Requirements; and (iii) internationally accepted standards of business conduct and ethics. In performing its obligations under the Subcontract, the Supplier shall conduct its business in compliance with the Anti-Corruption Laws and the Lender Requirements at all times.

### Without prejudice to the Supplier’s obligation to comply with Sub-Clause 4.12.1 , the Supplier warrants that it has in place, and that it shall maintain, adequate procedures designed to prevent incidences of corruption, including but not limited to a comprehensive code of conduct, internal training and maintenance of complete and accurate books and records and an effective system of internal accounting controls necessary to ensure proper recording and authorisation of the Supplier’s expenditures and dispositions. If not already in place, the Supplier shall appoint a senior manager or working committee tasked with monitoring the adequacy of, and adherence to, such procedures.

### The Supplier shall ensure that every contract with a subcontractor contains terms equivalent to those imposed on the Supplier in this Sub-Clause and any other person associated with the Supplier who is performing services or providing goods in connection with this Subcontract does so only on the basis of a contract which imposes on such person terms equivalent to those imposed on the Supplier in this Sub-Clause.

### Without prejudice to the Supplier’s obligation to comply with Sub-Clause4.12.3 , the Supplier shall procure that its subcontractors shall also have in place and shall maintain adequate procedures designed to prevent incidences of corruption and/or other matters set out in the Lender Requirements. Such procedures shall include a comprehensive code of conduct, internal training and maintenance of complete and accurate books and records and an effective system of internal accounting controls necessary to ensure proper recording and authorisation of the subcontractor’s expenditures and dispositions.

### The Contractor shall be entitled to audit compliance with the provisions of this Sub-Clause (*Prevention of Corruption*) and to inspect the Supplier’s accounts, and the Supplier shall provide such supporting evidence of compliance as the Contractor may reasonably request.

### The procedures described in Sub-Clause 4.12.2 and Sub-Clause 4.12.4 shall prohibit:

#### the offering or providing, directly or indirectly, of anything of value, including cash, bribes or kickbacks to any employee, representative, customer or official in connection with any transaction or business dealing connected with the project;

#### the offering or providing of gifts, other than gifts of nominal value to commemorate a particular business transaction or activity, to any employee or representative connected with the project and shall require the seeking of the Contractor’s management approval to give significant gifts or provide extravagant entertainment in connection with the project transaction or business dealing to anyone else;

#### the offering of business entertainment to any employee or representative connected with the project under circumstances that create the appearance of an impropriety;

#### the sharing or exchanging of any price, cost or other competitive information or the undertaking of any other collusive conduct with any other third party supplier/bidder with respect to any proposed, pending or current procurement connected with the project; and

#### the matters detailed in paragraph1 of the Lender Requirements.

### The Supplier shall notify the Contractor without delay of any breach or potential breach of the Anti-Corruption Laws and/or Lender Requirements it becomes aware of, and shall co-operate with the Contractor and provide to the Contractor all information that is reasonably requested by the Contractor for the purpose of assessing the Contractor’s own potential liability under the Anti-Corruption Laws and/or Lender Requirements arising in connection with any such breach or potential breach.

### The Supplier shall, to the extent permitted by any applicable Laws, indemnify and hold harmless the Contractor from and against any and all losses, liabilities, damages, costs, charges or expenses (including reasonable professional fees incurred in investigating or defending any claim or proceeding whether such claim or proceeding is successfully defended or not), fines or penalties incurred in connection with any breach or potential breach by the Supplier of this Sub-Clause.

### The Contractor reserves the right to terminate by written notice and with immediate effect, this Subcontract if the Supplier commits a breach of this Sub-Clause. In the event that the breach of this Sub-Clause relates to a subcontractor, the Contractor shall provide a written notice to the Supplier instructing that such subcontractor be terminated and/or cease services and/or supply of Materials to the Supplier by an agreed date. If the Supplier fails to terminate the subcontractor and/or ensure that such subcontractor ceases to provide services and/or supply Materials to the Supplier by the agreed date, then the Contractor reserves the right to terminate this Subcontract with effect from the day falling after the agreed date referred to above.

# Design

## General Design Obligations

### The Supplier shall be deemed to have scrutinized, prior to the Base Date, the Subcontract along with its annexures/attachments. The Supplier shall be responsible for the design of the Works in accordance with the Subcontract for the accuracy of scope of works, and Subcontract.

### The Contractor shall not be responsible for any error, inaccuracy or omission of any kind in the technical specifications, technical documents of the Subcontract, Any data or information received by the Contractor, or otherwise, shall not relieve the Supplier from his responsibility for the design and execution of the Works.

### Without prejudice to any other provision of the Subcontract, the Supplier shall, in the performance of its design obligations under the Subcontract:

#### perform such obligations in accordance with Good Industry Practice;

#### propose, select and use only materials in connection with the Subcontract in accordance with the applicable standards and guidance for good practice in the selection of materials;

#### exercise the level of skill, care and diligence referred to in paragraph (a) above not to specify for use or use or permit to be used in the Works (and to ensure that others do not specify for use or use or permit to be used in the construction of the Works) any products or materials which at the time of specification or use:

##### do not conform with standards or codes of practice or Good Industry Practice; and/or

##### are generally known to be deleterious, in the particular circumstances in which they are specified for use, to health safety and/or the durability of buildings or structures.

## Supplier’s Documents

### The Supplier’s Documents shall include the documents specified in the Subcontract, and/or documents required to satisfy all regulatory approvals, and the documents described in Sub‑Clause 5.4 (*As‑Built Documents*) and Sub‑Clause 5.5 (*Operation and Maintenance Manuals*). The Supplier’s Documents shall be written in the language for communications defined in Sub‑Clause 1.4 (*Law and Language*).

### The Supplier shall prepare all Supplier’s Documents, and shall also prepare any other documents necessary to instruct the Supplier’s Personnel.

### No review, approval or comment, or failure to review, approve or comment in relation to any Supplier’s Document shall relieve the Supplier from or otherwise prejudice or diminish any obligation, responsibility or liability of the Supplier.

## Training

### The Supplier shall carry out the training of the Contractor’s Personnel (whose names will be provided in due course by the Contractor to the Supplier) in the operation and maintenance of the Works..

## As‑Built Documents

### The Supplier shall prepare, and provide a complete set of final as‑built records of the execution of the Works, showing the exact as‑built locations, sizes and details of the work as executed. Such records shall be supplied to the Contractor prior to the Taking Over of the Works.

## Operation and Maintenance Manuals

### Prior to commencement of the pre-commissioning activities, the Supplier shall supply to the Contractor one (1) hard copy and one (1) soft copy of the project specific provisional operation and maintenance manuals in sufficient detail for the Contractor to operate, maintain, and repair (including dismantling, reassembling and adjusting) the Works.

### The Works shall not be considered to be completed for the purposes of Taking‑Over under Sub‑Clause 10.1 (*Taking Over of the Works*) until the Contractor has received the operation and maintenance manuals, in accordance with Sub-Clause 5.5.1.

### The Supplier shall supply to the Contractor the final operation and maintenance manuals (taking into account any comments made by the Contractor on the provisional operation and maintenance manuals submitted in accordance with Sub-Clause 5.5.1) at least seven (7) days prior to the Taking Over of the Works..

## Design Error

If errors, omissions, ambiguities, inconsistencies, inadequacies or other defects are found in the Subcontract or the Supplier’s Documents, they and the Works shall be corrected at the Supplier’s cost, (notwithstanding any consent or approval given by or on behalf of the Contractor under this Subcontract) and the Supplier shall not be entitled to an extension of time or other relief under this Subcontract accordingly.

# Staff

## Labour Laws

### The Supplier shall comply with all the relevant labour Laws applicable to the Supplier’s Personnel, including Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.

### The Supplier shall require his employees to obey all applicable Laws, including those concerning safety at work.

### The Supplier’s Personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations. The Contractor may require the Supplier to remove (or cause to be removed) any person employed in relation to the Works, who:

#### persists in any misconduct or lack of care;

#### carries out duties incompetently or negligently;

#### fails to conform with any provisions of the Supplier; or

#### persists in any conduct which is prejudicial to safety, health, or the protection of the environment.

### If appropriate, the Supplier shall then appoint (or cause to be appointed) a suitable replacement person in accordance with the requirements of this Clause 6 (*Staff*).

## Health and Safety

### The Supplier shall at all times take all reasonable precautions to maintain the health and safety of the Supplier’s Personnel and shall comply with the requirements of the Contractor on health and safety.

# Materials and Workmanship

## Manner of Execution

### The Supplier shall carry out the manufacture, the production and manufacture of Materials, and all other execution of the Works:

#### in the manner (if any) specified in the Subcontract and so that all Works shall be new and unused, and of good quality,

#### in a proper workmanlike and careful manner, in accordance with Good Industry Practices, and

#### with properly equipped facilities and non‑hazardous Materials, which are fit for their purpose.

## Inspection

### The Supplier shall implement a quality management system (QMS) to demonstrate compliance with the requirements of the Subcontract, ISO 9001 and Subcontract Documents as applicable. The Supplier shall produce an overall Quality Assurance Plan detailing the organisation and method of executing the Supplier’s QMS. This shall identify factory acceptance tests and Field Inspection and Tests to be carried out. The Supplier shall prepare Inspection and Test Plans (ITP) for the manufacture of the Materials. The ITPs shall be of a format approved by the Contractor and shall indicate the planned inspections or tests with applicable inspection codes including hold points as reasonably deemed appropriate by the Contractor.

### The Contractor’s Personnel, the Employer, Employer’s personnel, the Offtaker, the Lenders, the Government, the grid operator, any Government authority of Sierra Leone and any person authorised in writing by any of them for this purpose, shall at all reasonable times, in compliance with the HSE guidelines:

#### have access to all places from which Materials are being obtained, and

#### during production, manufacture , be entitled to examine, inspect, measure and test the materials and workmanship, and to check the progress of manufacture of Materials and/or Works.

#### and the Supplier shall, at its cost and expense, do all things reasonably necessary to facilitate and give effect to the terms of this Sub-Clause.

### the Supplier shall give the Contractor’s Personnel and any other persons referred to in Sub-Clause 7.2.2 full opportunity to carry out these activities, including providing access, facilities, permissions and safety equipment. No such activity shall relieve the Supplier from any obligation or responsibility.

### In respect of the work which Contractor’s Personnel are entitled to examine, inspect, measure and/or test, the Supplier shall give notice to the Contractor whenever any such work is ready and before it is covered up, put out of sight, or packaged for storage or transport. The Contractor shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or promptly give notice to the Supplier that the Contractor does not require to do so. If the Supplier fails to give the notice, he shall, if and when required by the Contractor, uncover the work and thereafter reinstate and make good such work, all at the Supplier’s cost.

### The Lenders’ Technical Adviser shall be entitled to accompany the Contractor’s Personnel on any examination, inspection or test, and to have access to the results of the same.

## Testing

### This Sub‑Clause shall apply to all tests related to Subcontract.

### The Contractor shall give the Supplier not less than twenty four (24) hours' notice of the Contractor’s intention to attend the tests. If the Contractor does not attend at the time and place agreed, the Supplier may proceed with the tests, unless otherwise instructed by the Contractor, and the tests shall then be deemed to have been made in the Contractor’s presence. In any event, the Supplier shall promptly forward to the Contractor duly certified reports of the test results.

### The Supplier shall promptly forward to the Contractor duly certified reports of the tests.

### For the avoidance of doubt the Supplier acknowledges and agrees that testing under this Subcontract shall not include any measurement uncertainty and uncertainty shall deemed to be zero (0) as per the developed procedures.

## Rejection

### If, as a result of an examination, inspection, measurement or testing performed prior to the issue of the Taking Over Certificate, any part of the Works, any Materials, design or workmanship is found to be Defective or otherwise not in accordance with the Subcontract, the Contractor may reject the Works Materials, design or workmanship or require retesting or further investigation by giving notice to the Supplier, with reasons. The Supplier shall then promptly make good the Defect and ensure that the rejected item complies with the Subcontract.

### If the Contractor requires this Material or Works design or workmanship to be retested, the tests shall be repeated under the same terms and conditions. If the rejection and retesting cause the Contractor to incur additional costs, the Supplier shall pay these costs to the Contractor.

## Remedial Work

### Notwithstanding any previous test or certification, the Contractor may instruct the Supplier to:

#### remove from the Site and replace (only in case repair is not possible within a reasonable period of time) or repair any Works or Materials which is not in accordance with the Subcontract,

#### remove and re‑execute any other work which is not in accordance with the Subcontract, and

#### execute any work which is urgently required for the safety of the Works, whether because of an accident, unforeseeable event or otherwise.

### If the Supplier fails to comply with any such instruction, which complies with Sub‑Clause 3.2 (*Instructions*), the Contractor shall be entitled to employ and pay other persons to carry out the work. Except to the extent that the Supplier would have been entitled to payment for the work, the Supplier shall pay to the Contractor all costs arising from this failure.

## Ownership of Materials

### Each item of Materials or Works shall become the property of the Contractor, free from Liens upon the earlier of (i) the date such Materials or Works are delivered to the Site or (ii) the date on which the Supplier is paid of the value of such Materials or Works in accordance with this Subcontract.

### In the event that any Materials or Works becomes the property of the Contractor prior to their delivery to the Contractor, the Supplier shall procure that they are clearly and visibly marked or otherwise identified, as appropriate (individually or in sets, by letters or by figures or by reference to a pre-determined code) as being the property of the Contractor..

### If any Lien over any item of the Materials or Works is filed, claimed or registered, the Supplier shall immediately upon becoming aware of same notify the Contractor and shall promptly discharge, such Lien. The Supplier shall indemnify the Contractor against any loss, damage, cost or expense (including legal fees and the cost and expense of the Contractor discharging any Lien itself where the Supplier has failed to do so) to the extent arising out of or in connection with any Lien being filed, claimed or registered.

# Commencement, Delays and Suspension

## Commencement of Works

### The Supplier shall commence the design and execution of the Works as soon as practicable after the Base Date has occurred in accordance with this Subcontract, and shall then proceed with the Works with due expedition and without delay.

### Where the Supplier has carried out any design, services or works intended to form part of the Works prior to the Base Date or the date of the Subcontract such activities shall be deemed to have been carried out pursuant to, and shall be subject to the requirements of, this Subcontract and the warranties and undertakings set out in this Subcontract shall apply to such activities (without prejudice to the generality of such warranties and undertakings).

## Programme

### The Supplier shall submit a programme at the kick off meeting for Contractor’s review and thereafter shall submit a revised programme whenever the agreed programme is inconsistent with actual progress or with the Supplier’s obligations. Each programme shall include:

#### the order in which the Supplier intends to carry out the Works, including the anticipated timing of each major stage of the Works,

#### the sequence and timing of inspections and tests specified in the Subcontract, and

#### a supporting report which includes:

##### a general description of the methods which the Supplier intends to adopt for the execution of each major stage of the Works,

##### S-curves,

### The Contractor’s Personnel shall be entitled to rely upon the programme when planning their activities.

### The Supplier shall promptly give notice to the Contractor of specific probable future events or circumstances which may adversely affect or delay the execution of the Works. In this event, or if the Contractor gives notice to the Supplier that a programme fails (to the extent stated) to comply with the Subcontract or to be consistent with actual progress and the Supplier’s stated intentions, the Supplier shall submit a revised programme to the Contractor in accordance with this Sub‑Clause 8.2.

### The furnishing of a programme (or any revised program) by the Supplier or any review, comment or approval of it (or failure to do so) by the Contractor shall not relieve the Supplier from or alter any of its warranties, obligations or liabilities (including its liability for Delay Liquidated Damages) under this Subcontract and shall not constitute the granting of any extension of time or an approval of any variation.

## Extension of Time for Completion

### The Supplier shall be entitled, to an extension of the Time for Completion if and to the extent that such Time for Completion is or will be delayed by any of the following causes:

#### a Variation

#### a cause of delay giving an entitlement to extension of time under a Sub‑Clause of these Conditions,

#### provided always that the Supplier shall not be entitled to an extension of time to the extent that the cause of the relevant delay is due to any breach, default or negligence of the Supplier (or any person for whom the Supplier is responsible in accordance with the Subcontract).

### If the Supplier considers himself to be entitled to an extension of the Time for Completion, the Supplier shall give notice to the Contractor in accordance with Sub‑Clause 19.1 (*Supplier’s Claims*).

### Notwithstanding anything stated in this Subcontract to the contrary, the Supplier’s entitlement to an extension to the Time for Completion shall be determined in accordance with the provisions of this Subcontract and such entitlement shall be reduced to the extent that any negligent act or omission, breach of Subcontract, other default or delay by the Supplier, its Personnel and their officers, agents or employees has caused or contributed to such delay.

### The Supplier agrees that it shall use best endeavours to eliminate or minimise any delay in attaining the Time for Completion.

### The Contractor shall be entitled at its discretion to unilaterally extend any Time for Completion by written notice to the Supplier subject to provisions Clause 12 (*Variations and Adjustment*).

### Extensions to the Time for Completion may be granted by the Contractor to the Supplier either prospectively or retrospectively.

### The Supplier shall at all times use reasonable endeavours consistent with Good Industry Practices to minimize delay.

## Rate of Progress

### If, at any time:

#### actual progress is too slow to complete the Works by the Time for Completion, and/or

#### progress has fallen (or will fall) behind the current programme under Sub‑Clause 8.2 (*Programme*),

other than as a result of a cause listed in Sub‑Clause 8.3 (*Extension of Time for Completion*), then the Contractor may instruct the Supplier to submit, under Sub‑Clause 8.2 (*Programme*), a revised programme and supporting report describing the revised methods which the Supplier proposes to adopt in order to expedite progress and complete the Works by the Time for Completion.

### Unless the Contractor notifies otherwise, the Supplier shall adopt these revised methods, which may require increases in the working hours and/or in the numbers of Supplier’s Personnel and/or resources , at the risk and cost of the Supplier. If these revised methods cause the Contractor to incur additional costs, the Supplier shall pay these costs to the Contractor, in addition to Delay Liquidated Damages (if any) under Sub‑Clause 8.5.

## Delay Liquidated Damages

### If the Supplier fails to complete the Works within the Time for Completion, the Supplier shall pay or allow liquidated damages for delay to the Contractor (“**Delay Liquidated Damages**”). Such Delay Liquidated Damages shall be calculated on a daily basis for each day by which the completion of the Works falls after the relevant Time for Completion for the Works. Such calculation shall be in accordance with the rate as set out in the Purchase Order. The Supplier shall pay to the Contractor such liquidated damages or allow the Contractor to deduct such liquidated damages from sums otherwise payable to the Supplier within ten (10) days of the end of each week in which the relevant delay event occurs.

### The Delay Liquidated Damages shall not relieve the Supplier from his obligation to complete the Works, or from any other duties, obligations or responsibilities which he may have under the Subcontract.

### The Parties agree that the Delay Liquidated Damages represent an agreed genuine pre-estimate of losses likely to be suffered by the Contractor in the event of a delay to the completion of the Works beyond the relevant Time for Completion and are not a penalty.

### In the event that the Delay Liquidated Damages payable or allowed under this Sub-Clause 8.5 (*Delay Liquidated Damages*) are found to be void as a result of a claim, or proceedings raised by either Party , the Supplier shall be liable to the Contractor for any losses and/or expenses suffered or incurred by the Contractor as a result of the failure to achieve the completion of the Works on or before the Time for Completion, provided the amount of damages payable in such event does not exceed the amount that would have been payable had the Delay Liquidated Damages not been void.

## Suspension of Work

### The Contractor may at any time instruct the Supplier to suspend progress of part or all of the Works. During such suspension, the Supplier shall protect, store and secure such part or the Works against any deterioration, loss or damage.

### If and to the extent that the cause for the suspension is the responsibility of the Supplier, the following Sub‑Clauses 8.7 (*Consequences of Suspension*) shall not apply.

## Consequences of Suspension

### If the Supplier suffers delay and/or incurs Cost from complying with the Contractor’s instructions under Sub‑Clause 8.6 (*Suspension of Work*), the Supplier shall give notice to the Contractor and shall be entitled subject to Sub‑Clause 19.1 (*Supplier’s Claims*) to:

#### an extension of time for any such delay, if completion is delayed, under Sub‑Clause 8.3 (*Extension of Time for Completion*), and

#### payment of any such Cost, which shall be added to the Subcontract Price.

### After receiving this notice, the Contractor shall proceed in accordance with Sub‑Clause 3.3 (*Determinations*) to agree or determine these matters.

### The Supplier shall not be entitled to an extension of time for, or to payment of the Cost incurred in, making good the consequences of the Supplier’s failure, faulty design, workmanship or materials, or of the Supplier’s failure to protect, store or secure in accordance with Sub‑Clause 8.6 (*Suspension of Work*).

# Tests on Completion

## Supplier’s Obligations

### The Contractor shall carry out the Tests on Completion in accordance with the Subcontract with the Services by the Supplier.

### The Contractor shall inform to the Supplier the date after which the Contractor will be ready to carry out the Tests on Completion.

### The Tests on Completion shall be carried out in accordance with the Subcontractin the following sequence:

#### pre‑commissioning tests, which shall include the appropriate inspections and functional tests to demonstrate that each item of Works can safely undertake the next stage;

#### commissioning tests, which shall include the specified operational and capability tests to demonstrate that the Works can be operated safely and as specified, under all available operating conditions;

#### trial operation, which shall demonstrate that the Works perform reliably and in accordance with the Subcontract for the period set out in the Subcontract without defects or trips requiring a manual reset (other than as set out in the Subcontract);

#### performance tests in relation to the Works;

#### reliability run tests (if applicable as per the Subcontract); and

#### any other tests as per the Subcontract.

### Nothing in this Subcontract shall impose any restriction on the Employer from selling and retaining the proceeds of such sale of any electrical energy produced during the conduct of the Tests on Completion.

### As soon as the Works have passed the Tests on Completion described in Sub-Clauses 9.1.3 (a), (b) (c), (d) and (e), the Supplier shall submit a certified report of the results of these tests to the Contractor for acceptance and such acceptance shall not be unreasonably withheld by the Contractor.

## Retesting

#### If the Works fail to pass the Tests on Completion, Sub‑Clause 7.4 (*Rejection*) shall apply, and the Contractor may require the failed tests, and Tests on Completion, to be repeated under the same terms and conditions. All costs and expenses reasonably incurred by the Contractor as a result of the repetition of the Tests on Completion under this Clause shall be paid by the Supplier or may be recovered from the Supplier as a debt provided that the repetition of the Tests of Completion was caused a result of the acts or omissions of the Supplier.

## Failure to Pass Tests on Completion

### If the Works have not achieved the requirements for Taking Over then notwithstanding any other provision of this Subcontract, the Contractor shall be entitled to:

#### carry out further repetition of Tests on Completion pursuant to Sub‑Clause 9.3(*Retesting*) (without prejudice to the Contractor’s other rights and remedies under the Subcontract in the event that the Works fail to pass such repeated Tests on Completion);

#### issue a Taking‑Over Certificate and get a reduction of the Subcontract Price as provided in Clause 9.3.2; or

#### where the Minimum Performance Levels have not been achieved or any pass/fail Tests on Completion have not been successfully completed, at the Contractor’s discretion either:

##### terminate the Supplier’s employment under this Subcontract in accordance with Sub-Clause 14.2 (*Termination by Contractor*) (following which the consequences of termination set out in of Sub-Clause 14 shall apply); or

##### reject the Works, in which event the Contractor shall have the remedies as are provided in Sub-Clause 9.4 (*Rejection Remedies*);

##### issue a Taking-Over Certificate and get a reduction of the Subcontract Price as provided in Clause 9.3.2

#### where the Performance Guarantees have not been met (but provided that any Performance Guarantees to which a Minimum Performance Level applies and/or pass/fail Tests on Completion have been met or passed (as applicable)) then the Contractor shall have the remedies as are provided in Sub-Clause 10.3.

### In the event of Sub-Clause 9.3.1(b) or Sub-Clause 9.3.1(c)(iii), the Supplier shall proceed in accordance with all its other obligations under the Subcontract, and the Subcontract Price shall be reduced by such amount as shall be appropriate to cover the reduced value to the Contractor as a result of this failure. The Contractor may require the reduction to be:

#### agreed by both Parties (in full satisfaction of this failure only) and paid before this Taking‑Over Certificate is issued, or

#### determined and paid under Sub‑Clause 3.3 (*Determinations*).

## Rejection Remedies

### Where in this Subcontract it is stated that the Contractor shall have the remedies set out in this Sub-Clause 9.4, the following shall apply:

#### if instructed by the Contractor, the Supplier shall, at its cost, dismantle and remove the Works from the Site and title in the Works shall revert to the Supplier. In addition and as a separate entitlement, the Contractor shall be entitled to recover:

##### all sums paid for the Works, plus

##### other substantiated costs and liabilities.

#### if no dismantling is instructed by the Contractor, the Contractor shall be entitled to a reduction in the Subcontract Price in accordance with Clause 9.3.2.

# Contractor’s Taking Over

## Taking Over of the Works

### Except as stated in Sub‑Clause 9.3 (*Failure to Pass Tests on Completion and Attainment of Longstop Date prior to Taking Over*), the Works shall be Taken Over by the Contractor when:

#### the Works have been completed in accordance with the Subcontract,

#### the Works have successfully completed the Tests on Completion and achieved all Performance Guarantees, or where applicable, achieved the Minimum Performance Levels and the Supplier has paid or allowed the relevant Performance Liquidated Damages;

#### the Supplier has paid or the Contractor has set off any and all undisputed Delay Liquidated Damages (and for the purposes of this Sub-Clause 10.1.1(c), “undisputed” shall be deemed to refer to any claim for Delay Liquidated Damages that have not been referred to or are the subject of a formal dispute resolution process pursuant to this Contract or otherwise) and/or Performance Liquidated Damages for which the Contractor is liable;

#### any spare parts and tools referred to in the Subcontract have been delivered to the Contractor ;

#### the Supplier has completed the training required under Sub-Clause 5.3 (*Training*);

#### all consents, and / or permits required for the operation and maintenance of the Works which are the responsibility of the Supplier are in full force and effect;

#### the Supplier has delivered the as-built drawings in accordance with Sub-Clause 5.4 (*As‑Built Documents*) and the operation and maintenance manuals in accordance with Sub-Clause 5.5 (*Operation and Maintenance Manuals*);

#### the Supplier has provided the written discharge in accordance with Sub‑Clause 13.7.4 and the Supplier has provided lien waivers releasing the Contractor;

#### the Supplier has provided the Warranty Bond

#### the Supplier has provided the performance test reports; and

#### the Supplier has returned all equipment and parts borrowed from the Contractor.

### The Supplier shall apply by notice to the Contractor for a Taking‑Over Certificate after the Works, in the Supplier’s opinion, are complete and ready for Taking Over and the conditions in Sub-Clause 10.1.1 have been satisfied.

### The Contractor shall, within twenty eight (28) days after receiving the Supplier’s application:

#### issue the Taking‑Over Certificate to the Supplier, stating the date (the “**Taking-Over Date**”) on which the Works achieved Taking Over in accordance with the Subcontract, except for the items on the Punch List (the “**Outstanding Works**”); or

#### reject the application, giving reasons and specifying the work required to be done by the Supplier to enable the Taking‑Over Certificate to be issued. The Supplier shall then complete this work before issuing a further notice under this Sub‑Clause.

## Deduction

### Where any part of the Works is not completed as at the Taking-Over Date (including any Outstanding Works) the Contractor may deduct from any amount payable to the Supplier an amount equal to the value of such part or parts of the Works (and the Contractor shall proceed in accordance with Sub-Clause 3.3 (*Determination*) to agree or determine such amount). Any such deduction shall be released to the Supplier once the Outstanding Works have been completed.

## Performance Liquidated Damages

### If the Works achieve the Minimum Performance Levels but not the Performance Guarantees, the Supplier shall pay to the Contractor liquidated damages (“**Performance Liquidated Damages**”) for the performance shortfall in accordance with Subcontract.

### Performance Liquidated Damages shall be paid by the Supplier to the Contractor within fourteen (14) days of the Supplier’s receipt of a notice from the Contractor setting out the amount of such Performance Liquidated Damages that are then due and payable. The Contractor may, without prejudice to any other method of recovery, deduct the amount of such Performance Liquidated Damages from any monies due or to become due to the Supplier.

### These Performance Liquidated Damages shall not relieve the Supplier from his obligation to complete the Works, or from any other duties, obligations or responsibilities which he may have under the Subcontract.

### The Parties agree that the Performance Liquidated Damages represent an agreed genuine pre-estimate of losses likely to be suffered by the Contractor in the event that the Works, having achieved the Minimum Performance Levels, do not achieve the Performance Guarantees, and are not a penalty.

### In the event that the Performance Liquidated Damages payable under this Sub-Clause 10.3 (*Performance Liquidated Damages*) are found to be void as a result of a claim or proceedings raised by either Party, the Supplier shall be liable to the Contractor for any losses and/or expenses suffered or incurred by the Contractor as a result of the failure of the Works to achieve the Performance Guarantees, provided the amount of damages payable in such event does not exceed the amount that would have been payable had the Performance Liquidated Damages not been void.

# Defects Liability

## Completion of Outstanding Works and Remedying Defects

### The Supplier guarantees and warrants that the Works and Supplier’s Documents shall be free from all Defects and shall be in the condition required by the Subcontract (fair wear and tear excepted) for the duration of the Defects Notification Period.

### From the Taking Over Date in respect of the Works the Contractor shall, subject to access limitations imposed by the Employer’s operation of the Works and the Employer’s reasonable commercial requirements, allow the Supplier to have such access to the Works as is reasonably necessary to complete the Outstanding Works (which the Supplier must complete within such reasonable time as is instructed by the Contractor).

### The Supplier shall (in co-operation with the Contractor and the Employer):

#### minimise disruption to the operation of the Works; and

#### complete such work at the earliest practical opportunity.

### If during the Defects Notification Period any part of the Works to which such Defects Notification Period relates is not in accordance with Sub-Clause 11.1.1, the Contractor shall notify the Supplier in writing, giving such supporting data as the Contractor has readily available. The Supplier shall at its option, promptly procure the repair, replacement and correction of such part of the Works (including any Defect and damage arising from such a Defect) so as to ensure that it complies with the warranties in Sub-Clause 11.1.1. The Supplier shall to the extent practicable carry out its obligations under this Sub-Clause 11.1 so as not to interfere with the use of the Works by the Employer and any contractor engaged by the Employer.

## Cost of Remedying Defects

### All work referred to in Sub‑Clause 11.1 (*Completion of Outstanding Work and Remedying Defects*) shall be executed at the risk and cost of the Supplier, as soon as practicable, in consultation with the Contractor and at such time as the Contractor may instruct.

### Extension of Defects Notification Period

### The Defects Notification Period for the Works or part of the Works which are not in itself defective shall be extended if and to the extent that the Works or such part of the Works (as the case may be) cannot be used for the purposes for which they are intended by reason of a Defect or damage attributable to the Supplier.

### The Defects Notification Period in respect of any part of the Works that is repaired, replaced, converted, altered, added to or modified under Sub-Clause 11.1 shall be as per the Purchase Order.

## Failure to Remedy Defects

### If the Supplier fails to remedy any Defect or damage under Sub-Clause 11.1.3 within a reasonable time, a date may be fixed by (or on behalf of) the Contractor, on or by which the Defect or damage is to be remedied. The Supplier shall be given reasonable notice of this date.

### If the Supplier fails to remedy the Defect or damage by this notified date and this remedial work was to be executed at the cost of the Supplier under Sub‑Clause 11.2 (*Cost of Remedying Defects*), the Contractor may (at his option):

#### carry out the work himself or by others, in a reasonable manner and at the Supplier’s cost, but the Supplier shall have no responsibility for this work; and the Supplier shall pay to the Contractor the costs reasonably incurred by the Contractor in remedying the Defect or damage;

#### agree or determine a reasonable reduction in the Subcontract Price of such amount as shall be appropriate to cover the reduced value to the Contractor as a result of this failure. The Contractor may require the reduction to be agreed by both or, failing agreement, the reduction shall be determined by the Contractor in accordance with Sub-Clause 3.3 (*Determinations*); or

#### if the Defect or damage deprives the Contractor of substantially the whole benefit of the Works or any major part of the Works, the Contractor shall (i) be entitled to reject the Works, in which event the Contractor shall have the remedies set out in 9.4 (*Rejection Remedies*) or (ii) terminate the Subcontract as a whole, or in respect of such major part which cannot be put to the intended use.

## Removal of Defective Work

### If any Defect or damage cannot be remedied expeditiously on the Site and the Contractor gives consent, the Supplier may remove from the Site for the purposes of repair such items of Works as are Defective or damaged. This consent may require the Supplier to increase the amount of the Performance Security or Warranty Bond by the full replacement cost of these items. In case such defective items become essential in the meantime for the operation of the Works, the Supplier shall replace at Site free of cost to the Contractor, the defective items, before the defective items are removed from the Site.

## Further Tests

### Subject to Sub-Clause 11.2 (*Cost of Remedying Defects*), if the work of remedying of any Defect or damage may affect the performance of the Works, the Contractor may require the repetition of any of the tests described in the Subcontract, including Tests on Completion. The requirement shall be made by notice within twenty eight (28) days after the Defect or damage is remedied.

### These tests shall be carried out in accordance with the terms applicable to the previous tests.

## Supplier to Search

### Without prejudice to Sub-Clause 11.1, the Supplier shall, if required by the Contractor, search for the cause of any Defect, under the direction of the Contractor.

## Performance Certificate

### Performance of the Supplier’s obligations under this Clause 11 shall not be considered to have been completed until the Contractor has issued the Performance Certificate to the Supplier, stating the date on which the Supplier completed his obligations under this Clause 11.

### The Contractor shall issue the Performance Certificate within thirty five (35) days after the expiry of the Defects Notification Periods, or as soon thereafter as the Supplier has supplied all the Supplier’s Documents and completed and tested all the Works, including remedying any Defects and damage required under this Clause 11. If the Contractor fails to issue the Performance Certificate (other than where the Supplier has not satisfied the requirements for the issuing of the Performance Certificate by the Contractor), the Performance Certificate shall be deemed to have been issued.

### After the issuance of the Performance Certificate, the Supplier shall, to the extent possible assign to the Contractor all warranties from any subcontractor, vendor or manufacturer or supplier which extend beyond the Defects Notification Period and/or the Latent Defect Period.

## Unfulfilled Obligations

### After the Performance Certificate has been issued, each Party shall remain liable for the fulfilment of any obligation and discharge of any liability which remains unperformed or undischarged at the time such Performance Certificate is issued. For the purposes of determining the nature and extent of unperformed obligations, the Subcontract shall be deemed to remain in force.

## Exclusive Warranty

### To the extent permitted by applicable Laws, the contractual warranties set out in the Subcontract will be the exclusive contractual warranties provided by the Supplier in relation to the Works and in lieu of all other contractual warranties (including any other patent or latent) in relation to the same that may be implied by statute or otherwise.

## Latent Defects

### If a Latent Defect occurs during the relevant Latent Defect Period, the Supplier shall execute all work required to remedy such Latent Defect as well as any damage to the Works caused by such Latent Defect on or before the expiry date of the Latent Defects Period.

### The Contractor shall provide the Supplier such reasonable access to the Works as the Supplier requires to carry out such remedial work.

### The Parties agree that the provisions of Sub-Clauses 11.3.2 (a) and (b) (*Failure to Remedy Defects*), and 11.4 (*Removal of Defective Work*) shall apply *mutatis mutandis* to Latent Defects.

# Variations and Adjustments

## Right to Vary

### Variations may be initiated by the Contractor at any time prior to issuing the Taking-Over Certificate for the Works, either by an instruction or by a request for the Supplier to submit a proposal.

### The Supplier shall execute and, save as provided herein, be bound by each Variation instructed by the Contractor.

### The Supplier shall only perform a Variation as directed in writing by the Contractor.

## Value Engineering

### The Supplier may, at any time, submit to the Contractor a written proposal which (in the Supplier’s opinion) will, if adopted, (i) accelerate completion, (ii) reduce the cost to the Contractor of executing, maintaining or operating the Works, (iii) improve the efficiency or value to the Contractor of the Works, or (iv) otherwise be of benefit to the Contractor.

### The proposal shall be prepared at the cost of the Supplier and shall include the items listed in Sub‑Clause 12.3 (*Variation Procedure*). The Contractor shall be entitled to accept or reject any such proposal in its absolute discretion without any liability. Where the Contractor approves a Variation proposed by the Supplier it shall issue a Variation in accordance with Sub-Clause 12.3 (*Variation Procedure*). Implementation of such Variation shall not derogate from the Supplier’s obligations under the Subcontract and in particular its obligations to attain Taking Over.

## Variation Procedure

### If the Contractor requests a proposal, prior to instructing a Variation, the Supplier shall respond in writing as soon as practicable by submitting (either within Fourteen (14) days or such other time limit as may be agreed between the Parties):

#### a description of the proposed design and/or work to be performed and a programme for its execution;

#### the Supplier’s proposal for any necessary modifications to the programme according to Sub‑Clause 8.2 (*Programme*) and to the Time for Completion;

#### the Supplier’s proposal for adjustment to the Subcontract Price, and

#### all information in support of the above which is reasonably required in order for the Contractor to assess the Supplier’s submissions and obtain any approvals from the Employer or lenders.

### The Contractor shall, as soon as practicable after receiving such proposal (under Sub‑Clause 12.2 (*Value Engineering*) or otherwise), respond with an instruction to execute the Variation, approval, disapproval or comments. The Supplier shall not delay any work other than work relating to the variation proposal under discussion, whilst awaiting a response.

### Each instruction to execute a Variation , shall be issued by the Contractor to the Supplier, who shall acknowledge receipt.

### Upon instructing or approving a Variation, the Contractor shall proceed in accordance with Sub‑Clause 3.3 (*Determinations*) to agree or determine adjustments to the Subcontract Price, and/or extension of time. These adjustments shall include (as appropriate) any associated delay costs imposed upon the Works, and shall take account of the Supplier’s submissions under Sub‑Clause 12.2 (*Value Engineering*)if applicable.

# Subcontract Price and Payment

## The Subcontract Price

### Payment for the Works shall be made on the basis of the lump sum Subcontract Price (subject to adjustments only in accordance with the Subcontract) as per the payment terms mentioned in the Subcontract.

### The Supplier shall pay all taxes, duties and fees required to be paid by him under the Subcontract, and the Subcontract Price shall not be adjusted for any of these taxes, duties and fees.

## Advance Payment

### The Contractor shall make an advance payment (the **Advance Payment**) to the Supplier as per the payment terms mentioned in the Subcontract. The Supplier shall obtain (at its own cost) and provide to the Contractor a duly executed on demand Advance Payment bank guarantee in an amount equal to the Advance payment.

### The Supplier shall ensure that the Advance Payment bank guarantee is valid and enforceable until one (1) month after the completion of supplies under this Subcontract, but shall at all times ensure that the Advance Payment bank guarantee will be valid and enforceable until the date on which the amount of Advance Payment has reduced to zero in accordance with the terms of the Advance Payment bank guarantee.

### The Advance Payment shall be repaid through proportional deductions in interim payments of the Subcontract Price until such time as the Advance Payment has been repaid in full.

### If the Advance Payment has not been repaid prior to the issue of the Taking‑Over Certificate for the Works or prior to termination of this Subcontract, the whole of the balance then outstanding shall immediately become due and payable by the Supplier to the Contractor.

## Application for Interim Payments

### The Supplier shall submit a Statement together with invoice(s) in one original and two copies to the Contractor upon achieving a payment milestone, showing in detail the payment milestones achieved during the respective month and the sum that the Supplier considers to be due, together with invoice(s) and other supporting documents to demonstrate the accomplishments of the relevant payment milestone. The due date for payment shall be as mentioned in the Purchase Order.

### The Statement shall include the following items, as applicable, which shall be expressed in the various currencies in which the Subcontract Price is payable, in the sequence listed:

#### any instalment of the Subcontract Price payable, by reference to the payment milestone achieved up to the end of the month (excluding items described in paragraphs (b) to (c) below);

#### any amounts to be added and/or deducted for the Advance Payment and repayments ;

#### any amounts paid by way of direct payment by the Employer to Supplier.

#### any other additions or deductions which may have become due under the Subcontract or otherwise, including those under Clause 19 (*Claims and Disputes*); and

#### the deduction of amounts included in previous Statements.

### Statements shall be accompanied by:

### (a) the relevant invoices and

### (b) supporting documents and other information as may reasonably be requested by the Contractor.

## Schedule of Payments

### The Supplier will only be entitled to payment of an instalment when it has achieved the milestone event for such instalment.

## Interim Payments

### No amount will be paid until the Contractor has received and approved the Performance Security required under Sub-Clause 4.2 (*Performance Security*).

### Without prejudice to any other right of set-off the Contractor may have recourse to:

#### if anything supplied or work done by the Supplier is not in accordance with the Subcontract, the cost of rectification or replacement may be withheld until rectification or replacement has been completed; and/or

#### if the Supplier was or is failing to perform any work or obligation in accordance with the Subcontract, and had been so notified by the Contractor, the value of this work or obligation may be withheld until the work or obligation has been performed.

### The Contractor may, by any payment, make any correction or modification that should properly be made to any amount previously considered due. Payment shall not be deemed to indicate the Contractor’s acceptance, approval, consent or satisfaction.

## Timing of Payments

### The Contractor shall pay to the Supplier:

#### the amount which is due in respect of each Statement, other than the Final Statement, within the period as specified in the Purchase Order after its receipt of the respective Statement; and

#### the final amount due, within sixty (60) days after receiving the Final Statement and written discharge in accordance with Sub‑Clause 13.7 (Statement at Completion).

## Statement at Completion

### Within twenty-eight (28) days after receiving the Taking‑Over Certificate for the Works, the Supplier shall submit to the Contractor three copies of a final statement at completion with supporting documents.

### If the Contractor disagrees with or cannot verify any part of the draft final statement, the Supplier shall submit such further information as the Contractor may reasonably require and shall make such changes in the draft as may be agreed between them. The Supplier shall then prepare and submit to the Contractor the final statement as agreed. This agreed statement is referred to in these Conditions as the “**Final Statement**”.

### If, following discussions between the Parties and any changes to the draft final statement which are agreed, it becomes evident that a dispute exists, the Contractor shall pay the agreed parts of the draft final statement in accordance with Sub‑Clause 13.5 (*Interim Payments*) and Sub‑Clause 13.6 (*Timing of Payments*). Thereafter, when the dispute is finally resolved the Supplier shall then prepare and submit to the Contractor a Final Statement.

### When submitting the Final Statement, the Supplier shall submit a written discharge which confirms that the total of the Final Statement represents full and final settlement of all moneys due to the Supplier under or in connection with the Subcontract.

## Final Payment

### In accordance with Sub‑Clause 13.7.1 (*Timing of Payments*), the Contractor shall pay to the Supplier the amount which is finally due, less all amounts previously paid by the Contractor and any deductions in accordance with Sub‑Clause 3.3 (Determinations).

## Cessation of Contractor’s Liability

### The Contractor shall not be liable to the Supplier for any matter or thing under or in connection with the Subcontract or execution of the Works, except to the extent that the Supplier shall have included an amount expressly for it in the Final Statement.

# Termination by Contractor

## Notice to Correct

### If the Supplier fails to carry out any material obligation under the Subcontract, the Contractor may by notice specify the breach in reasonable detail and require the Supplier to make good the failure and to remedy it within a specified reasonable time).

## Termination by Contractor

### The Contractor shall be entitled to terminate the Subcontract if:

#### the Supplier repeatedly fails to comply with the Lender Requirements;

#### the Supplier fails to comply with a notice under Sub‑Clause 14.1 (*Notice to Correct*) either because the Supplier is not capable of rectifying the relevant breach or where the breach is capable of remedy but the Supplier fails to remedy such breach without reasonable and valid reason within the time specified in the notice provided pursuant to Sub-Clause 14.1;

#### the Supplier Abandons the Works or otherwise demonstrates the intention not to continue performance of his obligations under the Subcontract;

#### the Supplier fails to proceed with the Works in accordance with Clause 8 (*Commencement, Delays and Suspension*);

#### the Supplier subcontracts the whole of the Works or assigns the Subcontract otherwise than in accordance with the provisions of the Subcontract;

#### the occurrences of Insolvency Event in respect of the Supplier; or

#### the Supplier gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:

##### for doing or forbearing to do any action in relation to the Subcontract, or

##### for showing or forbearing to show favour or disfavour to any person in relation to the Subcontract,

or if any of the Supplier’s Personnel, agents or vendors gives or offers to give (directly or indirectly) to any person any such inducement or reward (save that lawful inducements and rewards to Supplier’s Personnel shall not entitle termination), or if the Supplier is otherwise in breach of Sub-Clause 4.12 (*Prevention of Corruption*);

#### fails in the reasonable opinion of the Contractor to maintain satisfactory progress so that the Supplier shall not (or in all likelihood shall not) be able to achieve the Time for Completion by the Longstop Date;

#### the Taking-Over Date has not been achieved by the Longstop Date;

#### the Supplier’s liability for Performance Damages reaches the Performance LDs Cap;

#### in the circumstances described in Sub-Clauses 9.3.1(b) (*Failure to Pass Tests on Completion*) or 11.3.2(c) (*Failure to Remedy Defects*);

#### the Supplier fails to provide, maintain and/or replace any Performance Security as required by the Subcontract;

#### the Supplier’s failure to pay Liquidated Damages or other amounts which are due to the Contractor (provided that in the case of a dispute relating to Delay Liquidated Damages, the failure to pay shall not apply to those liquidated damages that have been referred to or the subject of formal dispute resolution process pursuant to this Subcontract or otherwise) , within the time periods specified in the Subcontract or, if a time is not specified, within sixty (60) days of Contractors notice for payment of such amounts, save and except where the Contractor is able to or has set-off such amounts under this Subcontract;

#### any of the insurance policies taken out by the Supplier ceases to be effective and the Supplier fails to replace it within thirty (30) days;

#### the Supplier incurs liability which reaches or exceeds the Subcontract Liability Limit

#### the Key Project Document is/are terminated, cancelled or revoked (as the case may be) as a result of any breach by, or default of, the Supplier.

In any of these events or circumstances, the Contractor may, upon giving notice of termination to the Supplier, terminate the Subcontract with effect from thirty (30) days after the date of the notice of termination.

### The Contractor’s election to terminate the Subcontract shall not prejudice any other rights of the Contractor, under the Subcontract or otherwise.

### Upon termination under this Clause 14.2 (*Termination by Contractor*) the Supplier shall:

### (i) cease all further work, and deliver to the Contractor the parts of the Works and the Supplier's Documents, that has been executed up to the date of termination;

### (ii) comply immediately with any reasonable instructions for the protection of life or property or for the safety of the Works; and

### (iii) if required by the Contractor, use his best efforts to novate any vendor subcontract to the Contractor.

### (iv) assign all warranties and/or guarantees in respect of the Works (or part thereof) to the Employer.

### After termination under this Clause 14.2, the Contractor may complete the Works and/or arrange for any other entities to do so.

## Valuation at Date of Termination

### As soon as practicable after termination under Clause 14.2 (*Termination by Contractor*) has taken effect, the Contractor shall proceed in accordance with Sub‑Clause 3.3 (*Determinations*) to agree or determine the value of the Works, Materials and Supplier’s Documents, and any other sums due and payable to the Supplier for work executed or liabilities incurred in accordance with the Subcontract up to the date of termination. The Supplier shall not be entitled to receive any further payment or compensation for any Works, activities undertaken and/or liabilities incurred pursuant to this Subcontract to the extent the same have occurred after the date of termination.

## Payment after Termination

### After termination under Clause 14.2 (*Termination by Contractor*) has taken effect, the Contractor may:

#### withhold further payments to the Supplier until the costs of design, execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by the Contractor, have been established; and/or

#### recover from the Supplier reasonable additional costs incurred by the Contractor in relation to completing the Works,

#### After recovering any such losses, damages and extra costs, and provided that all Subcontracts and/or warranties and/or guarantees have been assigned or novated to the Employer in accordance with this Contract the Contractor shall pay any balance to the Supplier (if any).

#### 14.4A Loss of Key Project Document

#### Following termination of this Subcontract under Sub-Clause 14.2.1(p) (*Termination by Contractor*), the consequences of such termination shall be dealt with in accordance with Sub-Clause 9.5 (*Rejection Remedies*).

## Contractor’s Entitlement to Termination

### The Contractor shall be entitled to terminate the Subcontract at any time for the Contractor’s convenience by giving a notice of such termination to the Supplier. The termination shall take effect twenty eight (28) days after the later of the dates on which the Supplier receives this notice.

### If the Subcontract is terminated under Sub-Clause 14.5.1,

#### the Supplier shall proceed in accordance with Sub‑Clause 15.2 (*Cessation of Work*) and shall be paid in accordance with Sub‑Clause 18.4 (*Optional Termination, Payment and Release*).

# Termination by Supplier

## Termination by Supplier

### The Supplier shall be entitled to terminate the Subcontract if:

#### the Contractor goes bankrupt;

#### the Contractor gives or offer to give to any person any bribe, gift gratuity, commission or other thing of value or otherwise is in breach of Clause 4.12 (*Prevention of Corruption*); or

#### the Contractor fails to comply with Sub-Clause 1.7 (*Assignment*).

### In the case of any of these events described in Sub-Clause 15.1.1, the Supplier may, upon giving thirty (30) days' notice to the Contractor and if the event or circumstance is continuing at the expiry of such thirty (30) day period, terminate the Subcontract. Any termination or purported termination under this Clause 15 shall be subject to the provisions of the Collateral Warranty.

## Cessation of Work

### After a notice of termination under Sub‑Clause 14.5 (*Contractor’s Entitlement to Termination*), Sub‑Clause 15.1 (*Termination by Supplier*) or Sub‑Clause 18.4 (*Optional Termination, Payment and Release*) has taken effect, the Supplier shall promptly:

#### cease all further work, except for such work as may have been instructed by the Contractor for the protection of life or property or for the safety of the Works,

#### hand over Supplier’s Documents, Materials and other work, for which the Supplier has received payment

#### assign all warranties and/or guarantees in respect of the Works (or part thereof) to the Employer, and

#### (at the Employer's option) agrees to the Subcontract to the Employer; and

## Payment on Termination

### After a notice of termination under Sub‑Clause 15.1 (*Termination by Supplier*) has taken effect, the Contractor shall pay the Supplier in accordance with Sub-Clause 18.4 (*Optional Termination, Payment and Release*).

## Suspension of the Works

### Supplier’s Entitlement to Suspend Work

#### If the Contractor fails to comply with Sub-Clause 13.6 (*Timing of Payments*), the Supplier may, after giving not less than thirty (30) days' notice to the Contractor, suspend work (or reduce the rate of work) unless and until the Supplier has received the payment as described in the notice. If the Supplier subsequently receives such payment, the Supplier shall immediately resume normal working.

#### If the Supplier suffers delay and/or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this Sub-Clause 15.4.1 (*Supplier’s Entitlement to Suspend Work*), the Supplier shall give notice to the Contractor and shall be entitled subject to Sub-Clause 19.1 (*Supplier’s Claims*) to:

##### an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.3 (*Extension of Time for Completion*), and/or

##### payment of any such Cost, which shall be added to the Subcontract Price.

#### After receiving this notice, the Contractor shall proceed in accordance with Sub-Clause 3.3 (*Determinations*) to agree or determine these matters.

#### Any suspension or purported suspension by the Supplier in accordance with the Subcontract shall be subject to the provisions of the Collateral Warranty.

## Termination Rights Exclusive

### Clause 15 (Termination by Supplier) and Clause 18 (*Force Majeure Event*) set out the Supplier’s exclusive rights to terminate the Subcontract after the Base Date and the Supplier’s exhaustive rights and remedies in respect of such termination. The Subcontract shall not be terminated by the Supplier for any other reason, and any other such rights or remedies (whether for breach of subcontract or under any other legal theory) are hereby excluded. The Supplier’s rights to terminate or suspend the Subcontract shall at all times be subject to the Collateral Warranty.

# Risk and Responsibility

## Indemnities

### The Supplier shall indemnify and hold harmless the Contractor, the Contractor’s Personnel, and their respective officers, employees, agents and representatives against and from all claims, damages, losses and expenses in respect of:

#### bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the design, execution and completion of the Works and/or the remedying of any Defects, and

#### damage to or loss of any property , to the extent that such damage or loss arises out of or in the course of or by reason of the design, execution and completion of the Works and/or the remedying of any Defects.

### The Contractor shall indemnify and hold harmless the Supplier, and its Personnel against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of bodily injury, sickness, disease or death of any person whatsoever, which is attributable to any negligence, wilful act or breach of the Subcontract by the Contractor.

## Supplier’s Care of the Works

### The Supplier shall take full responsibility for the care of the Works and Materials from the Base Date until delivery as per the agreed Incoterms. For the avoidance of doubt, responsibility for the care of the Works or any part of the Works that is rejected under Sub‑Clause 9.3.1(c)(ii) (*Failure to Pass Tests on Completion and Attainment of Longstop Date prior to Tests on Completion*) or Sub-Clause 11.3.2(c) shall remain with the Supplier.

### After responsibility has accordingly passed to the Contractor, the Supplier shall take responsibility for the care of any Outstanding Work, until such Outstanding Work has been completed and for the care of any part of the Works in relation to which the Supplier is performing its obligations under Clause 11 (*Defects Liability*) until such obligations have been completed.

### If any loss or damage happens to the Works, Materials or Supplier’s Documents during the period when the Supplier is responsible for their care the Supplier shall rectify the loss or damage at the Supplier’s risk and cost, so that the Works, Materials and Supplier’s Documents conform with the Subcontract. To the extent that any insurance policies are procured by the Contractor (and to the extent that such insurances name the Supplier as a co-insured) or in the case of assignment of the insurance proceeds to the Lenders or the Employer or the Contractor, such obligation to make good or restore shall not be conditional on the Supplier receiving such insurance proceeds.

### The Supplier shall be liable for any loss or damage caused by any actions performed by the Supplier after a Taking‑Over Certificate has been issued in accordance with Clause 11 (*Defects Liability*).

## Intellectual Property Rights

### In this Sub-Clause 16.3 (*Intellectual Property Rights*), "**infringement**" means an infringement (or alleged infringement) of any Intellectual Property Right relating to the Works, and / or Materials and "**claim**" means a claim (or proceedings pursuing a claim) alleging an infringement. Subject to any provisions in this Subcontract that grant the Contractor a right to a licence, the Supplier and its Personnel shall retain their rights in their Intellectual Property Rights. All rights to intellectual property developed, utilized or modified in the performance of the Work shall remain the property of the Supplier and /or its Vendors.

### Whenever a Party does not give notice to the other Party of any claim within twenty eight (28) days of receiving the claim, the first Party shall be deemed to have waived any right to indemnity under this Sub-Clause 16.3 (*Intellectual Property Rights*).

### The Contractor shall indemnify and hold the Supplier harmless against and from any claim alleging an infringement which is or was:

#### a result of the Supplier’s compliance with the technical specification or

#### a result of any Works being used by the Contractor for a purpose other than that indicated by, or reasonably to be inferred from, this Subcontract.

### The Supplier shall indemnify and hold the Contractor harmless against and from any other infringement or claim which arises out of or in relation to (i) the Supplier’s design, manufacture, construction or execution of the Works and/or Materials, or (ii) the use of the Works and/or Materials.

## Limitation of Liability

### Neither Party shall be liable to the other Party under any theory of recovery, whether based in Subcontract, tort (including negligence and strict liability), warranty, indemnity, defects liability or otherwise, for loss of use of any Works, loss of profit or revenue, loss of any Subcontract, cost of capital, financing cost, loss of electric power, cost of purchased or replacement electric power, loss of information or data, and interest charges, financial losses, loss of any sub-contractor for any indirect or consequential loss or damage which may be suffered by the other Party in connection with this Subcontract. This exclusion of liability shall not apply to liability for losses and costs for which the Supplier or the Contractor (as applicable) is liable pursuant to Sub-Clause 1.9 (*Contractor’s Use of Intellectual Property Rights and Supplier’s Documents*), Sub-Clause 4.12 (*Prevention of Corruption*), Sub-Clause 8.5 (*Delay Liquidated Damages*) (or damages in lieu of Delay Liquidated Damages as the case may be), Sub-Clause 9.4 *(Rejection Remedies),* Sub-Clause 10.3 (*Performance Liquidated Damages*) (or damages in lieu of Performance Liquidated Damages as the case may be), Sub-Clause 11.3 (*Failure to Remedy Defects*), Sub-Clause 14.4 (*Payment after Termination*), Sub Clause 16.1 (*Indemnities*), Sub-Clause 16.3 (*Intellectual Property Rights*), Sub-Clause 1.8 (Confidentiality) and the Supplier’s liability in the case of fraud, fraudulent misrepresentation, wilful misconduct, or violation of any applicable Laws;

### The total liability of the Supplier to the Contractor, under or in connection with the Subcontract shall not exceed an amount equal to one hundred per cent (100%) of the Subcontract Price (the “Sub**contract Liability Limit**”), provided that the Subcontract Liability Limit shall not apply to or be diminished by:

#### the Supplier’s liability to indemnify the Contractor pursuant to 1.11.2, 4.8, 4.12, 7.6 (*Ownership of Materials*), 16.1.1 (*Indemnities*) and 16.3 (*Intellectual Property Rights*); and

#### the Supplier’s liability in the case of fraud, fraudulent misrepresentation, wilful misconduct, or violation of any applicable Laws.

### To the extent that any liability of the Supplier is recovered under any insurance policy taken out by the Contractor or the Employer, such proceeds shall not count towards the Subcontract Liability Limit.

### To the extent permitted by any applicable Law, the total liability of the Contractor to the Supplier, shall not exceed an amount equal to the Subcontract Price, provided that this shall not limit the Contractor’s liability in the case of indemnities given by Contractor to the Supplier under the Subcontract, fraud, fraudulent misrepresentation, deliberate default, wilful or reckless misconduct.

### It is acknowledged and agreed by the Parties that the Liquidated Damages set out in this Subcontract are a genuine pre-estimate of (and proportional to) the loss the Contractor will sustain as a result of the failure to which such Liquidated Damages relate.

# Insurance

## General Requirements for Insurances

### Each Party shall at its own expense take out and maintain in effect the insurances specified in the insurance schedule of this Subcontract in accordance with the requirements set out therein (including as to level of cover, duration, deductibles, exclusions, extensions and other conditions).

### The Supplier shall ensure that, where applicable, its vendor take out and maintain in effect adequate insurance policies for the vendors’ own personnel and vehicles and all work executed by them under this Subcontract unless the vendors are covered by the policies taken out by the Employer or the Contractor or the Supplier.

### The Parties shall provide reasonable assistance to each other as may be appropriate in connection with any claims that may be made under the policies of insurance effected pursuant to this Clause 17 (Insurance).

## Employer Insurances

### The Employer shall take out and maintain in effect the insurances specified in the insurance schedule (Employer’s Insurances).

### Insurances referred to in the insurance schedule as the Employer’s Insurances

#### shall include the Contractor and Supplier as co-insureds, and

#### shall include a waiver of subrogation from insurers for the interest of the insured parties.

### The Supplier shall comply with the terms of all insurance policies relating to the Works and/or the project under which the Supplier is an insured party.

# Force Majeure Event

## Notice of Force Majeure Event

### A Party that is prevented, hindered or delayed in performing any of its obligations under the Subcontract by a Force Majeure Event shall deliver a notice to the other Party within seven (7) Days of the date on which it became aware of the effect of such event, or within seven (7) Days of the date on which it ought reasonably to have known its performance would be so impacted, specifying:

#### the event or circumstance that constitutes the Force Majeure Event in reasonable detail;

#### the impact or anticipated impact of the Force Majeure Event on the affected Party’s performance of its obligations under the Subcontract;

#### the affected Party’s reasonable estimate of the duration of the impact of the Force Majeure Event on the affected Party’s performance of its obligations under the Subcontract; and

#### the steps that the affected Party has taken, is taking or intends to take under Sub-Clause 18.2 (*Duty to Minimise Delay*).

### If a Party does not deliver a notice when required under Sub-Clause 18.1 (*Notice of Force Majeure Event*), the protections available to that Party under this Sub-Clause 18 in relation to that Force Majeure Event shall apply only from the time when such a notice is delivered.

### For so long as a Party continues to claim to be affected by a Force Majeure Event, it shall provide monthly progress reports to the other Party in relation to:

#### the affected Party’s reasonable estimate of the length of time its performance will continue to be affected by such Force Majeure Event; and

#### the actions taken and actions proposed to be taken by the affected Party in order to mitigate the impact of the Force Majeure Event.

### The Party shall, having given notice, be excused from performance of its obligations under the Subcontract for so long as such Force Majeure Event prevents it from performing them, to the extent that its failure to perform those obligations is caused by a Force Majeure Event. Notwithstanding any other provision of this Subcontract, a Party shall be entitled to the protections available to it under this Subcontract in relation to a Force Majeure Event only to the extent that it has complied with its obligations under Sub-Clause 18.2 (*Duty to Minimise Delay*) in relation to that Force Majeure Event.

### The suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure Event, plus a reasonable additional period to enable the affected Party to remobilise following the date on which the Force Majeure Event ceases to render the affected Party unable to perform its obligations under the Subcontract.

### Notwithstanding any other provision of this Clause, Force Majeure shall not apply to:

#### obligations of either Party to make payments to the other Party under the Subcontract; or

#### any failure or delay to the extent that such failure or delay would nevertheless have been experienced by that Party had the Force Majeure Event not occurred.

## Duty to Minimise Delay

### A Party that is prevented, hindered or delayed in performing its obligations under the Subcontract by a Force Majeure Event shall:

#### use its reasonable efforts to mitigate the effects of that Force Majeure Event;

#### perform such of its obligations as are not prevented, delayed or hindered by that Force Majeure Event; and

#### resume full performance of its obligations under the Subcontract as soon as reasonably practicable after that Force Majeure Event ceases to prevent, delay or hinder such performance.

#### Notwithstanding any other provision of the Subcontract, a Party shall be entitled to the protections available to it under this Subcontract in relation to a Force Majeure Event only to the extent that it has complied with its obligations under Sub-Clause 18.2.1(a), (b) and (c) in relation to that Force Majeure Event.

### A Party shall immediately give notice to the other Party when it ceases to be affected by the Force Majeure Event.

## Consequences of Force Majeure

### If the Supplier is prevented from performing any of his obligations under the Subcontract by Force Majeure Event of which notice has been given under Sub‑Clause 18.1 (*Notice of Force Majeure*), and suffers delay by reason of such Force Majeure Event, the Supplier shall be entitled subject to Sub‑Clause 19.1 (*Supplier’s Claims*), to an extension of time for any such delay equivalent to the duration of the Force Majeure Event, if completion is or will be delayed, under Sub-Clause 8.3 (*Extension of Time for Completion*).

### After receiving this notice, the Contractor shall proceed in accordance with Sub‑Clause 3.3 (*Determinations*) to agree or determine these matters.

### Each Party shall bear any cost incurred by it as a result of any Force Majeure Event.

### Exclusions from Force Majeure Events

### The following events, circumstances or conditions shall not constitute a Force Majeure Event:

#### strikes, lock-outs, industrial disputes, industrial difficulties, work bans, blockages, picketing or other industrial action solely or primarily by employees of the affected Party;

#### any failure to take into account prevailing ground conditions (including geological conditions) that should have been foreseen by the use of Good Industry Practice based on the information actually available to the Supplier as at the Base Date;

#### lack of funds due to any commercial, economic, or financial reason, including the Supplier’s inability to achieve a satisfactory rate of return;

#### failure or delay of performance by any vendors of any tier, except to the extent that such failure or delay is itself caused by an event that is analogous to a Force Majeure Event or, the failure to comply by the Supplier and/or its sub-contractors or any of their respective representatives, with any Law or s (other than where such Law has been subject to a relevant or related Change in Law).

### Exclusion of general law force majeure principles

### No Party shall be excused from performing its obligations under the Subcontract by any unforeseen event or circumstance, nor any event or circumstance beyond its control except as expressly set out in the Subcontract.

## Optional Termination, Payment and Release

### If the execution of part of or substantially all the Works in progress is prevented for a continuous period of(i) two hundred and ten (210) days or (ii) an aggregate of two hundred and ten (210) days in any rolling fourteen (14) month period, by reason of a Force Majeure Event of which notice has been given under Sub‑Clause 18.1 (*Notice of Force Majeure Event*), then the Contractor shall be entitled to extend such (i) two hundred and ten (210) days or (ii) an aggregate of two hundred and ten (210) days in any rolling fourteen (14) month period referred to in this Sub-Clause 18.4.1 provided that the Supplier is compensated for any reasonable additional Costs that the Supplier incurs as a direct result of any such extension. Where the Contractor elects not to extend the (i) two hundred and ten (210) days or (ii) an aggregate of two hundred and ten (210) days in any rolling fourteen (14) month period referred to in this Sub-Clause 18.4.1 (or any subsequent period) then either Party may give to the other Party a notice of termination of the Subcontract. In this event, the termination shall take effect seven (7) days after the notice is given, and the Supplier shall proceed in accordance with Sub‑Clause 15.2 (*Cessation of Work*).

### Upon such termination, the Contractor shall pay to the Supplier:

#### the amounts payable for any work carried out up to the date of termination;

#### the Cost of Materials ordered for the Works which have been delivered to the Supplier, or of which the Supplier is liable to accept delivery. Such Materials shall become the property of the Contractor when paid for by the Contractor, and the Supplier shall place the same at the Contractor’s disposal;

#### any other Cost which in the circumstances was reasonably incurred by the Supplier in the expectation of completing the Works;

### The Supplier shall provide the Contractor with proof of the Costs claimed in Clause 18.4.2 within two (2) months, following such termination.

# Claims and Disputes

## Supplier’s Claims

### If the Supplier considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, in connection with the Subcontract, the Supplier shall give notice to the Contractor, describing the event or circumstance giving rise to the claim. The notice shall be given not later than twenty-one (21) days after the Supplier became aware of the event or circumstance.

### If the Supplier fails to give notice of a claim within such period of twenty one (21) days, the Time for Completion shall not be extended, the Supplier shall not be entitled to additional payment, and the Contractor shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub‑Clause shall apply.

### The Supplier shall also submit any other notices which are required by the Subcontract, and supporting particulars for the claim, all as relevant to such event or circumstance and such supporting particulars shall be provided as soon as reasonably practicable (taking into account the nature of the claim) after the notice provided by the Supplier pursuant to Sub-Clause 19.1.1.

### The Supplier shall keep such contemporary records as may be necessary to substantiate any claim. Without admitting liability, the Contractor may, after receiving any notice under this Sub‑Clause, monitor the record‑keeping and/or instruct the Supplier to keep further contemporary records. The Supplier shall permit the Contractor to inspect all these records, and shall (if instructed) submit copies to the Contractor.

### Within twenty-eight (28) days after the Supplier has sent notice under Clause 19.1.1, or within such other period as may be proposed by the Supplier and approved by the Contractor, the Supplier shall send to the Contractor a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

#### this fully detailed claim shall be considered as interim;

#### the Supplier shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Contractor may reasonably require; and

#### the Supplier shall send a final claim within twenty eight (28) days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Supplier and approved by the Contractor.

#### If the Supplier fails to give a fully detailed claim within such period of twenty-eight (28) days the Time for Completion shall not be extended, the Supplier shall not be entitled to additional payment, and the Contractor shall be discharged from all liability in connection with the claim.

### Within twenty eight (28) days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Contractor and approved by the Supplier, the Contractor shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within such time.

### The Contractor shall proceed in accordance with Sub‑Clause 3.3 (*Determinations*) to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub‑Clause 8.3 (*Extension of Time for Completion*), and/or (ii) the additional payment (if any) to which the Supplier is entitled under the Subcontract.

### The requirements of this Sub‑Clause are in addition to those of any other Sub‑Clause which may apply to a claim. If the Supplier fails to comply with this or another Sub‑Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub‑Clause.

## Disputes

### Any dispute arising out of or in connection with this Subcontract, including any question regarding its existence, validity or termination, shall first be attempted to be settled by an amicable effort on the part of the parties. An attempt to arrive at a settlement shall be deemed to have failed as soon as one of the parties so notifies the other party in writing.

### Any dispute which cannot be resolved within sixty (60) days pursuant to Sub-Clause 19.2.1 shall be referred to and finally resolved by arbitration administered by the Mumbai Centre for International Arbitration (“MCIA”) in accordance with the arbitration rules of the Mumbai Centre for International Arbitration (“MCIA Rules”) for the time being in force, which rules are deemed to be incorporated by reference in this clause. The seat of the arbitration shall be Mumbai. The Tribunal shall consist of three (3) arbitrators. The language of the arbitration shall be English. The governing law of this Clause 19.2 (Disputes) shall be Indian law.